IN THE MISSOURI SUPREME COURT

No. SC 85451

STATE OF MISSOURI, ex rel. THE DOE RUN RESOURCES CORPORATION, et al.

Relators,

v.

THE HONORABLE MARGARET M. NEILL
Presiding Judge, Twenty-Second Judicial Circuit, City of St. Louis,

Respondent.

On a Petition for Writ of Prohibition or, in the Alternative, Petition for Writ of Mandamus

---

BRIEF OF AMICUS ASSOCIATED INDUSTRIES OF MISSOURI

Marc H. Ellinger #40828
BLITZ BARDGETT & DEUTSCH, LC
308 East High Street, Suite 301
Jefferson City, Missouri 65101
Phone: (573) 634-2500
Facsimile: (573) 634-3358

TABLE OF CONTENTS

TABLE OF AUTHORITIES

JURISDICTIONAL STATEMENT

Amicus Associated Industries of Missouri ("AIM") adopts the jurisdictional statement of Relators. Amicus AIM files this Brief with consent of all Relators, but without consent of the attorney for Respondent and thus this brief is filed by leave of this Court pursuant to a Motion for Leave to File Amicus Curiae Brief.

AIM is the largest business and industry trade association in the state, serving as *The Voice of Missouri Business* for approximately 1,500 Missouri employers, who provide over 300,000 jobs in every county of Missouri. With an average of 135 employees, these association members remain actively engaged in monitoring and responding to all employer related issues in Missouri through a committee network facilitated by the Association.

In addition, as a trade association, AIM provides its members and affiliates with numerous educational seminars and conferences, connecting members with state and national experts on every business topic. AIM also offers a large library of management resource materials to assist members with employer / employee relations as well as assisting employers through discounted member service programs. Finally, AIM represents its membership before the Missouri legislature, state regulatory agencies, the courts and the public.

STANDARD OF REVIEW

Amicus Associated Industries of Missouri adopts the statement of the standard of review of the Relators.

STATEMENT OF FACTS

Amicus Associated Industries of Missouri adopts the Statement of Facts of the Relators.

POINTS RELIED ON

I.

A CORPORATE OFFICER OPERATING WITHIN HIS OFFICIAL SCOPE OF DUTY IS NOT LIABLE FOR HIS ACTS IN SUCH OFFICIAL CAPACITY WHERE THE OFFICER HAD NO DIRECT PARTICIPATION IN THE ALLEGED TORTIOUS CONDUCT AND THEREFORE THIS COURT SHOULD ISSUE ITS WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS AGAINST RESPONDENT TO DISMISS DEFENDANT KAISER FROM THE UNDERLYING CASE.

Knepper and Bailey, Liability of Corporate Officers and Directors, 7th Ed.(2003)

Lynch v. Blanke Baer and Bowey Krimko, Inc., 901 S.W.2d 147 (Mo. App. E.D. 1995) *Zipper v. Health Midwest*, 978 S.W.2d 398 (Mo.App. W.D. 1998)

II.

A CORPORATE OFFICER OPERATING WITHIN HIS OFFICIAL SCOPE OF DUTY IN A SOLELY ADMINISTRATIVE CAPACITY IS NOT LIABLE FOR ANY TORTS COMMITTED BY HIS CORPORATE EMPLOYER AND THEREFORE THIS COURT SHOULD ISSUE ITS WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS AGAINST RESPONDENT TO DISMISS DEFENDANT KAISER FROM THE UNDERLYING CASE.

Galloway v. Employers Mutual of Wausau, 286 So.2d 676 (La. Ct. App. 1973)

III.

THE ACTION OF JOINING A CORPORATE CHIEF FINANCIAL OFFICER AS A DEFENDANT IS PRETENSIVE AND MANDATES CHANGE OF VENUE FROM ST. LOUIS CITY AND THEREFORE THIS COURT SHOULD ISSUE ITS WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS AGAINST RESPONDENT TO DISMISS DEFENDANT KAISER AND ORDER VENUE TO BE REMOVED FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS IN THE UNDERLYING CASE.

State ex rel. Linthicum v. Calvin, 57 S.W.3d 855 (Mo. banc 2001)

ARGUMENT

Introduction

Amicus Associated Industries of Missouri ("AIM") represents the interest of approximately 1,500 employers across the State of Missouri who employ more than 300,000 employees in all capacities of business, from law to manufacturing and everything in between. In this position, AIM is especially sensitive to the impediments to business in Missouri regardless of the cause of such impediments.

In the current matter, the decision of the Respondent, Judge Neill, finding that a Chief Financial Officer of a corporation (and not a closely held corporation at that) may be joined as a defendant to a lawsuit against such corporation for his administrative acts in approving a budget and authorizing expenditures presents a devastating blow to Missouri businesses if not reversed by this Court. The effect of such decision will not only drive business out of the State of Missouri, but cause competent business people to avoid living in the State of Missouri or working for corporations which exist and operate in the State of Missouri, or both.

Furthermore, the bootstrapping of the joinder of a corporate officer, doing nothing more than his or her administrative duties, into venue in the City of St. Louis, or for that matter, in any other jurisdiction, creates but another impediment to businesses within the State of Missouri.[1]

[1] It also creates an impediment to getting educated and well paid individuals to move into or remain within the City of St. Louis; thereby compounding the problems of the

diminishing population; especially within certain segments of society across the City of St. Louis.

For the reasons stated in this Brief, AIM believes that this Court should issue its Writ of Prohibition or, in the Alternative, Writ of Mandamus against Respondent.

I.

A CORPORATE OFFICER OPERATING WITHIN HIS OFFICIAL SCOPE OF DUTY IS NOT LIABLE FOR HIS ACTS IN SUCH OFFICIAL CAPACITY WHERE THE OFFICER HAD NO DIRECT PARTICIPATION IN THE ALLEGED TORTIOUS CONDUCT AND THEREFORE THIS COURT SHOULD ISSUE ITS WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS AGAINST RESPONDENT TO DISMISS DEFENDANT KAISER IN THE UNDERLYING CASE.

The fundamental concept of corporations is premised on the corporation being its own entity and limiting the liability of its officers and directors to their individual acts and not for actions of the corporation. Not merely hornbook law, this most fundamental aspect of corporations has been adopted by every state in the nation, including Missouri. See e.g. *21 West, Inc. v. Meadowgreen Trails, Inc.*, 913 S.W.2d 858 (Mo. App. E.D. 1995). Going beyond the corporation requires an "extraordinary exception." *Greenberg v. Commonwealth ex. rel Attorney General*, 499 S.E.2d 266, 272 (Va. 1998.). There is no suggestion or pleading that would indicate that such an exception could be applied to Mr. Kaiser.

Black letter law is clear: "[M]erely being an officer or agent of a corporation does not render one personally liable for a tortious act of the corporation." Knepper and Bailey, Liability of Corporate Officers and Directors, 7th Ed., §6.07 (p. 6-14); citing *Lobato v.*

Payless Drug Stores, 261 F.2d 406, 408-409 (10th Cir. 1958). This is also the law of Missouri.

> In Missouri, merely holding a corporate office will not subject one to personal liability for the misdeeds of the corporation. *Grothe v. Helterbrand*, 946 S.W.2d 301, 304 (Mo.App. 1997); *Boyd v. Wimes*, 664 S.W.2d 596, 598 (Mo. App. 1984).

Zipper v. Health Midwest, 978 S.W.2d 398, 414 (Mo. App. W.D. 1998).

Changing the longstanding precedent of officer immunity for official acts would have a devastating impact upon corporations within the State of Missouri. From Chief Executive Officers down to employees on the line, everyone who works for a corporation does so on the assurance that they are secure in doing their job, within their official capacity, without becoming personally liable for corporate actions. To find that the official actions of a corporate office holder, which do not directly result in a tort occurring, would fundamentally strip the concept of officer limited liability out of Missouri corporate law. While such a result is currently advocated by Respondent and the Doyle[2] Plaintiffs, the unmentioned effect is that the long term result of such a determination would stifle business across Missouri and present

[2] The underlying case is *James Doyle, et al. v. Flour Corporation, et al.*, No: 012-08641 (Circuit Court of St. Louis City).

a barrier to new businesses locating in Missouri.

The position of the Doyle Plaintiffs and the Respondent, while potentially lucrative to the plaintiffs and their counsel, would have adverse results to the future of Missouri. For example, instead of preventing environmental problems from arising in the future, by encouraging the best and the brightest to work in companies in most need of environmental assistance; creating personal liability for persons solely acting in an official capacity, would have quite the opposite effect, scaring away the very people that are needed to address these issues. This detrimental effect has been recognized by the foremost commentators across the nation:

> Ironically, if this form of strict liability gains further judicial support and publicity, some knowledgeable and qualified managers may be scared away from serving companies with identifiable environmental risks. At a time when the service of the most talented directors and officers in such companies is greatly needed, the legal climate may encourage such talent to go elsewhere.

Knepper and Bailey, §10.04 (p. 10-12).

The specific facts of the current matter do more than just reinforce the need for this Court to retain the existing policies of limited liability for officers acting in their official capacity; they positively shout it from the rooftops. The underlying plaintiffs named Mr. Kaiser as a defendant for his actions as Chief Financial Officer of the Doe Run Resources Corporation. Amicus AIM's research has not found one case across the entire United States in which a Chief Financial Officer of a corporation was held personally liable for tortious acts

of the corporation not directly related to the filing or certification of financial records or statements. [3]

No Missouri case has ever imposed any liability on Chief Financial Officers. The only cases in Missouri jurisprudence where any type of personal liability was imposed upon the corporate officer resulted where the officer had direct control and oversight over the tortious conduct or the individual tort feasor. See e.g., *Honigmann v. Hunter Group, Inc.*, 733 S.W.2d 799 (Mo. App. E.D. 1987); *Curlee v. Donaldson*, 233 S.W.2d 746 (Mo. App. E.D. 1950) and *Robinson v. Moark-Nemo Consolidated Mining Company*, 163 S.W. 885 (Mo. App. 1914). In all of the above cases the officers' activities were directly the cause of the tort and such officer was personally participating in or directly overseeing the actions which caused the tort

---

[3] Conversely other well known recent CFO's who have, no doubt to their chagrin, found that improper financial management and reporting of financial assets can expose a CFO to personal, and in fact criminal, liability. There is no allegation by the Doyle Plaintiffs that Mr. Kaiser, the CFO of the Doe Run Resources Corporation, illegally or improperly issued financial statements or defrauded investors.

to occur. Such is simply not the case with Mr. Kaiser in the current underlying case.

The Affidavit of Mr. Kaiser is clear and unrefuted that his actions had nothing to do with the actual control of the smelter in Herculaneum or of any pollution controls related to the operations of such smelter. Courts of this state have gone as far as finding that the President of a corporation, who terminated an employee, was not a proper defendant since he was acting for the corporation. *Lynch v. Blanke Baer and Bowey Krimko, Inc.*, 901 S.W.2d 147, 153 (Mo. App. E.D. 1995). The Court in *Lynch* referenced the petition of plaintiff stating:

> Plaintiff's petition clearly states that Bryant was *acting for* defendant Blanke Baer when he terminated the plaintiff. While defendant Bryant may have had actual knowledge of the wrongful discharge, we find that defendant Bryant did not participate in an individual capacity in the discharge.

Id. at 154. This "direct" participation is a critical element of any type of personal liability of a corporate officer. Corporate officers, in Missouri, are only "held individually liable for tortious corporate conduct if they have actual or constructive knowledge of **and** participated in, an actionable wrong." *Zipper v. Health Midwest*, 978 S.W.2d 398, 414 (Mo.App. W.D. 1998) (emphasis added.). The use of the term "and" reflects that Missouri law requires not just knowledge but also participation in the wrong. Both components must be plead[4] and proven in

[4] Missouri being a fact pleading state, mere conclusory statements, such as those in the Doyle plaintiffs' Third Amended Petition, are not sufficient to survive a motion to

order for any liability to apply. Courts across the nation have reaffirmed the position cited in *Lynch*.

"A corporate officer is not personally liable for causing the corporation to terminate an employment contract 'unless his activity involves individual separate tortious acts.'" *Robbins v. Panitz*, 463 N.E.2d 615, 616 (NY 1957). "An officer of a corporation is normally not liable for the negligence of the corporation unless he or she participated in a tort committed by the corporation." *Trustco Bank New York v. S/N Precision Enterprises Inc.*, 650 N.Y.S.2d 846, 849 (NY App 1996). In *Trustco*, the court found that "mere allegations are not sufficient to hold a corporate officer personally liable." *Id.* The Secretary of a closely held corporation was found not to be liable since she had no direction or control over the company her husband ran. *Id.* at 850.

Similarly the Sixth Circuit has stated: "An employee of a corporation has no personal liability for the torts of the corporation unless the individual personally participated in the challenged actions." *Hahn v. Star Bank*, 190 F.3d 708, 714 (6th Cir, 1999). In *Hahn*, the

---

dismiss and maintain a party defendant who the subject of such conclusory statements. *ITT Commercial Finance Corp. v. Mid-America Marine Supply*, 854 S.W.2d 371, 379 (Mo. banc 1993).

Court found that the failure to make allegations of tortious conduct by the directors of Star Bank meant that no claim could be maintained against them and such claims were properly dismissed. *Id.*

Conversely where individual liability has been extended to a corporate officer, direct participation has been required. In *McGraw v. Weeks*, 930 S.W.2d 365 (Ark. 1996), the Arkansas Supreme Court found a farm manager personally liable for spray drift damages. This finding was based upon the manager being "personally involved" in the acts; "he supervised and ran the farming operations...he made the decision to apply 2,4-2 (the pesticide)...he instructed Norris Powell, an employee of the corporation, to apply the chemicals." *Id.* at 370-371.[5]

---

[5] The Court went even farther:

His [the farm manager's] testimony is abstracted as follows: "I told my

> employee what to put out, when to put it out, where, how to mix it and even what gear to drive the tractor in."... He admitted he did not direct the use of an anti-drift agent. He admitted he knew that 2, 4-2 was "the death of cotton." He admitted the applications were made on "several mornings and one afternoon." He admitted that his neighbor Weeks had cotton on his land...

Id. at 371. These admissions were sufficient to show personal knowledge and participation, none of which exist in the current matter with respect to Mr. Kaiser.

Plaintiffs, in their pleadings, do not even allege that Defendant Kaiser directly participated in, even in his official capacity, the action which allegedly caused their damages. Their argument is predicated upon the concept that a) Mr. Kaiser was involved in creating and adopting the budget, b) the budget provided expenditures for operations, c) those expenditures were used to operate the smelter in Herculaneum, and d) the operations of the smelter ultimately caused the alleged damages to the Plaintiffs. Plaintiff's theory has nothing even remotely close to direct participation or oversight of the allegedly tortious actions of the Doe Run Resources Corporation.

To find Mr. Kaiser as a proper Defendant would be analogous to finding the Missouri State Budget Director as a person liable for civil rights violations in a Missouri correctional center. The Budget Director, just like Mr. Kaiser, is responsible for creating the budget and evaluating changes and amendments to such budget. The State Budget Director has no control over the day to day operations of a correctional center, just as Mr. Kaiser has no control over the day to day operations of the smelter. Any party coming forward in a civil rights action alleging that the State Budget Director was personally liable would find such a claim quickly dismissed. In the current case, Mr. Kaiser should similarly be dismissed as a party Defendant.

The position asserted by Respondent and the Doyle Plaintiffs would open a pandora's box of ill-effects, few of which can even be imagined at this point. However, naming of the CFO of the St. Louis Post Dispatch as an individual party Defendant in a libel suit or the CFO of Planned Parenthood in a medical malpractice action would, based upon the reasoning of Respondent, be the direct application of Respondent's ruling. Such a ruling would have

devastating consequences on individual's lives simply by virtue of them working for corporations in Missouri. This was neither the intent nor the effect of Missouri's corporation laws and of this Court's precedence with respect to corporate officers and limited liability.

Accordingly this Court should issue its Writ of Prohibition or, in the alternative, Writ of Mandamus to Respondent and order Mr. Kaiser to be dismissed as a defendant to the underlying action.

II.

A CORPORATE OFFICER OPERATING WITHIN HIS OFFICIAL SCOPE OF DUTY IN A SOLELY ADMINISTRATIVE CAPACITY IS NOT LIABLE FOR ANY TORTS COMMITTED BY HIS CORPORATE EMPLOYER AND THEREFORE THIS COURT SHOULD ISSUE ITS WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS AGAINST RESPONDENT TO DISMISS DEFENDANT KAISER IN THE UNDERLYING CASE.

When officers are operating in their official and administrative capacity and are personally neither engaging in what they know to be tortious conduct nor overseeing and authorizing others persons involved in what they know to be tortious conduct, such officer should not have liability imputed to him. As other courts have determined, administrative actions are not sufficient to generate liability.

> Personal liability cannot be imposed on the individual just because he has some general administrative responsibility. Rather, he must have a personal duty toward the injured plaintiff.

Galloway v. Employers Mutual of Wausau, 286 So.2d 676 (La. Ct. App. 1973). The Louisiana case has been followed in other jurisdictions. See e.g. *Haupt v. Miller*, 514 N.W.2d 905, 909 (Ia. 1994).

The actions taken by Mr. Kaiser are the definition of a purely administrative responsibility. It is difficult to fathom anymore administrative duties than the creation of a budget and the approval of expenditures as a Chief Financial Officer of a company. They are not actions to which any reasonable person could impute control over the operations of the entities under the budgetary system. The exemption for administrative actions was clearly designed for people just like Mr. Kaiser and should be affirmed by this Court at an absolute minimum. Accordingly, this Court should make its Preliminary Writ of Prohibition absolute, or in the alternative, issue its Writ of Mandamus against Respondent.

III.

THE ACTION OF JOINING A CORPORATE CHIEF FINANCIAL OFFICER AS A DEFENDANT IS PRETENSIVE AND MANDATES CHANGE OF VENUE FROM ST. LOUIS CITY AND THEREFORE THIS COURT SHOULD ISSUE ITS WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS AGAINST RESPONDENT TO DISMISS DEFENDANT KAISER AND ORDER VENUE TO BE REMOVED FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS IN THE UNDERLYING CASE.

A review of the history of the current matter clearly reflects that the only reason Mr. Kaiser was joined as a Defendant by the Doyle Plaintiffs is that he is the **sole** employee, officer, or director of the Doe Run Resources Corporation who resides in the City of St. Louis. Simply put, Plaintiffs would have zero opportunity to maintain an action of the type in the case below in the City of St. Louis barring the joinder of Mr. Kaiser as a Defendant. Accordingly, the Court should look at the intent, as evidenced from the history of the case and the pleadings, of the joinder of Mr. Kaiser to determine whether such joinder is pretensive or not. In this case, it is clearly pretensive. Mr. Kaiser should be dismissed and the cause should be transferred to a county in which venue properly lies.

While much has been made of the plaintiff friendly juries of the City of St. Louis; a mere disconcerting issue is that venue can be obtained so pretensively and allow Defendants,

who have no normal tie to nor take any action in, the City of St. Louis to be forced to defend a case in that forum. Venue was created to ensure that parties would only have to defend actions in the jurisdiction in which either the underlying event occurred or in which the party chose to reside. Seeking out an officer or employee of a company, who had no direct involvement in any action alleged to have caused harm and then naming them as a defendant, cannot be viewed as anything but a pretensive joinder.

It has been recognized by this Court that pretensive joinder should not be allowed to bootstrap jurisdiction of a case into a particular jurisdiction in Missouri. See *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855 (Mo. banc 2001) and *Lynch v. Blanke Baer & Bowey Krimko, Inc.*, 901 S.W.2d 147 (Mo. App. E.D. 1995).

Amicus AIM represents the interest of many employers across the state, all of whom are concerned about venue being improperly vested against them due to pretensive joinder of an employee. The current matter would not be, in the long term, an isolated case if allowed to stand. Plaintiffs' attorneys can be expected to continue, regardless of the actions taken by corporations, to attempt to haul them into improper forums to have claims adjudicated where

the corporation has no tie to a forum into which they are summoned.[6]

As Judge Wolfe has reflected in the *Linthicum* case there is definitely an impression, backed up by verdicts that the City of St. Louis is an appealing forum for plaintiff attorneys. *Linthicum.* at 859. The venue in the current case was pretensively created by the Doyle Plaintiffs and this Court should not allow such actions, in contempt of the intent and merits of the judicial system, to continue. Accordingly, this Court should order the underlying action removed from the City of St. Louis and transferred to an appropriate jurisdiction.

CONCLUSION

The Third Amended Petition of the Doyle plaintiffs fails to demonstrate that the Chief Financial Officer of the Doe Run Resources Corporation, Mr. Kaiser, was directly involved

[6] Perhaps the only solution would be for an employer to ban all of its employees, officers and directors from residing within the City of St. Louis. The effect of such decisions would obviously strip away employees, with secured jobs who can contribute to the City, and compel them not to reside in the City of St. Louis. Thus exacerbating an already deteriorating situation in what once was our state's largest city.

in any action that purported caused harm to the plaintiffs. The decision to name Mr. Kaiser has no basis in current Missouri law. Furthermore the effects of destroying the limited liability offered corporate officers will be devastating to Missouri Business and the economy of our state.

Employees and officers of corporations depend upon the existing law that shields them from liability, based upon the corporate actions, where the employee or officer is not directly involved in the action in question. Without such protection, corporations will leave Missouri, exacerbating an already troubled business climate.

Finally, the pretensive nature of the addition of Mr. Kaiser as a defendant demands that he be dismissed as a defendant and that the underlying case be transferred to an appropriate county where jurisdiction and venue lie. Pretensive joinder of a party merely to obtain venue in the City of St. Louis will ultimately have detrimental effects on the City of St. Louis, by frightening away the very individuals that are most needed in that city.

This Court should not fall for the siren song of the Doyle plaintiffs; there is no basis to keep Mr. Kaiser in the underlying action. The effects of finding that mere approval of a budget and related expenditures to create individual liability of a corporate officer would be severe and long-lasting across the entire Missouri business climate. This Court should affirm the limited liability of corporate officers and issue its Writ against Respondent.

WHEREFORE, Amicus, Associated Industries of Missouri, on behalf of its thousands of executives and employees of members represented in Missouri, prays that this Court issue its Writ of Prohibition or, in the Alternative, Writ of Mandamus against Respondent in the

above-captioned matter.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By: _____

Marc H. Ellinger, #40828
308 East High Street
Suite 301
Jefferson City, MO 65101
Telephone No.: (573) 634-2500
Facsimile No.: (573) 634-3358

CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing Brief complies with the provisions of Rule 55.03 and complies with the limitations contained in Rule 84.06(b) and that:

(A) It contains 4,639 words, as calculated by counsel's word processing program;

(B) A copy of this Brief is on the attached 3 ½" disk; and that

(C) The disk has been scanned for viruses by counsel's anti-virus program and is free of any virus.

_____
Marc H. Ellinger

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Amicus Brief and a copy in electronic format on a 3 ½" disk was sent U.S. Mail, postage prepaid, to the following parties of record on this 20th day of October, 2003.

Jeffrey L. Cramer
T. Michael Ward
Brown & James, P.C.
1010 Market Street, 20th Floor
St. Louis, MO 63101

John H. Quinn, III
Armstrong Teasdale, L.L.P.
One Metropolitan Square
Suite 2600
St. Louis, MO 63102

Andrew Rothschild
Richard Ahrens
Lewis, Rice & Fingersh, L.C.
500 North Broadway, Suite 2000
St. Louis, MO 63102

John R. Musgrave
James M. Cox
Thompson Coburn, L.L.P.
One U.S. Bank Plaza
St. Louis, MO 63101

Honorable Margaret M. Neill
Circuit Court of the City of St. Louis
Civil Courts Building
10 N. Tucker
St. Louis, MO 63101

Robert F. Ritter
Gray, Ritter & Graham, P.C.,
701 Market Street, Suite 800
St. Louis, MO 63101

Jeffrey L. Lowe
Simon, Lowe & Passanante, L.L.C.
701 Market Street, Suite 390
St. Louis, MO 63101

Kevin S. Hannon
The Hannon Law Firm, L.L.C.
1641 Downing Street
Denver, CO 80218

Robert B. Reeser
The Law Offices of Robert Reeser
306 West Third Street
Sedalia, MO 65302-0388

_____
Marc H. Ellinger

(KRW7108.WPD;1)